



DATE: December 14, 1998

TO: Erica Cooper
Deputy General Counsel, Corporate Operations Branch
Legal Division

Jack D. Smith
Deputy General Counsel, Litigation Branch
Legal Division

FROM: Stephen M. Beard
Director, Office of Congressional Relations
and Evaluations

SUBJECT: *Analysis of the Legal Division's Caseload* (EVAL-98-004)

The Office of Congressional Relations and Evaluations (OCRE) has completed a review of a Hotline allegation received by the Office of Inspector General (OIG) on February 25, 1998. The complainant alleged that FDIC attorneys claimed to have a large number of current matters, when many of the matters were actually closed, as a means of preserving their jobs. Further, the complainant specifically alleged that certain individuals in Southwest Service Center (SWSC) Legal Division management directed the SWSC attorneys to hold real estate and related matters open. On February 27, 1998, the OIG Hotline forwarded the allegation to the Legal Division for disposition, and referred it to OCRE so we could review the merits of the allegation. On June 24, 1998, the OIG received additional information on the allegation regarding the workload of an individual attorney. The complainant alleged that an attorney was recording matters as inactive when the matters could be closed with a limited amount of work.

The objective of our review was to assess the validity of the allegation by studying the SWSC Legal Division's handling and reporting of legal matters through (1) preparation of trend analyses of Legal Management Information System (LMIS) data for legal matters, (2) examination of matter files for statistically selected real estate and related matters, and (3) analysis of Legal Division staffing projections and trends.

BACKGROUND

The mission of the Legal Division is to provide the Federal Deposit Insurance Corporation (FDIC) with professional, comprehensive, and cost effective legal services and support in a timely manner for (1) oversight of the safe and sound operation of insured depository

institutions, (2) resolution of financially troubled and insolvent institutions, (3) recovery and liquidation of assets of insolvent institutions, (4) prosecution and defense of litigation related to FDIC operations, (5) insuring compliance with applicable civil and criminal laws and regulations, and (6) taking appropriate measures in response to violations of such laws.

To accomplish its mission, the Legal Division has offices nationwide, including the SWSC in Dallas, Texas. The Legal Division field structure at the SWSC includes sections that provide legal services to the Division of Supervision (DOS) and the Division of Resolutions and Receiverships (DRR). The field structure also includes a Professional Liability Section (PLS). The complainant suggested that the alleged activity was occurring within the DRR Legal Asset Disposition Operations (AD) and, specifically, within the Asset Disposition II Section (AD II). A Deputy Regional Counsel was in charge of the DRR AD I, II, and III, and a Section Chief was in charge of AD II. Staffing in AD II consisted of a Section Chief, 11 attorneys, a paralegal, and 2 legal technicians.

The Legal Division uses LMIS as the primary means of monitoring its geographically dispersed operations and various legal matters, and reporting to the Chairman and the Congress. To ensure LMIS reflects its workload, the Legal Division requires all matters exceeding 1 hour be recorded in LMIS. According to the *Legal Management Information System Reference Guide*, revised April 1997, LMIS "...provides the capabilities to manage matter information, matter calendar events, matter player information, notes relative to the matter, and matter documents." LMIS has 177 unique data fields to capture relevant data on each matter and examples of these data fields are shown in Table 1.

Table 1: Selected Data Fields and Their Descriptions

Data Field	Description
Matter #	A system-generated field automatically assigning an identifier for each matter.
A/I/C	Matter status codes representing active, inactive, or closed, with matters automatically assigned an active code when added to the system.
Subtype	A required field showing the transactional/non-litigation matters' subtypes such as real estate or environmental matters.
FDIC Atty1	A required field containing the name of the FDIC attorney assigned to the matter.
Summary	Field for briefly summarizing the matter (not a required or system-generated field).
Logged	A required field for assigning the current date when adding a matter to the system.
Assigned	The date the matter was assigned to the attorney (not a required or system-generated field).
Est Comp	The estimated completion date for the matter (not a required or system-generated field).
Closed	The date the matter was closed (not a required or system-generated field).

Source: *Legal Management Information System Reference Guide*, revised April 1997

Using the captured data, LMIS has the capability of producing standard reports for use by attorneys and management in monitoring matters. Examples of standard reports identified in the *Legal Management Information System Reference Guide*, revised April 1997, include:

- Staff Attorney Case Report: Lists active matters and associated critical due dates.
- Comprehensive Case Report: Data dump on a screen by screen basis for matters.
- Not Updated Within Past 90 Days: Lists all active/inactive closed bank matters not updated within the past 90 days.
- Estimated Completion Date Blank: Lists all active/inactive matters where the estimated completion date is blank.
- Estimated Completion Date Past: Lists all active/inactive matters where the estimated completion date is past due.

Because of the importance that the Legal Division places on LMIS, the Legal Division implemented a data quality program during the first quarter of 1998 to improve the quality of the system's information. The goals of the program are to (1) improve the integrity of information by reflecting accurate and complete information, (2) achieve and maintain a data integrity goal with a high percentage—96 to 100 percent—for data completion and accuracy, and (3) increase the ability to make better business decisions while decreasing the time to acquire data. The program consists of testing specific data fields and correcting incomplete or inaccurate data beginning with data fields identified by the Legal Division as high priority. Once the incomplete or inaccurate data fields are identified, the errors are forwarded to the reviewing attorney for correction.

In addition to LMIS, AD II uses a Paradox database called the "Legal Services Request System" (Logging and Tracking System) to monitor matters. Because of the problems associated with the Legal Case Management System (CMS), LMIS's predecessor, the Logging and Tracking System was developed to provide needed information on matters. The data input form, "Request for Services," is completed by a legal technician with information on the legal services requested by DRR. The form contains the date received, requestor's name, subject matter, date request was delivered to the attorney, delivery date (estimated completion date), and the completed date. Using this form, a legal technician enters the information into the Logging and Tracking System and LMIS. In addition to tracking matters, defined as legal work exceeding 1 hour, the Paradox database is also used to track legal work requiring less than 1 hour.

AD II also has procedures to ensure that matters do not exceed the estimated completion date as recorded in the Logging and Tracking System. The estimated completion date is typically 2 weeks from the date the request was delivered to the attorney. The responsible attorney is to contact the Section Chief to request an extension, which is typically done through electronic mail. Once approved by the Section Chief, the legal technician inputs the new estimated completion date into the Logging and Tracking System. The legal technician produces a monthly report that management uses to monitor attorney workload. The report lists matters along with their estimated completion date.

The Legal Division's staffing, as well as the rest of the Corporation's staffing, is determined through a process known as core staffing. The core staffing process looks at the Corporation's

anticipated workload and determines the level of staffing needed to handle the workload on a 5-year basis. The driver divisions, namely DRR, DOS, and DCA, identify workload drivers, such as the projected number of failed institutions and the resulting assets required to be liquidated, for use by the Legal Division and other support divisions in determining their staffing. The workload drivers are approved by FDIC's Operating Committee. Using the approved workload drivers, the Legal Division determines the projected staffing needed to handle its anticipated workload.

SCOPE OF REVIEW

Our evaluation primarily focused on testing a statistically selected sample of active, inactive, and closed matters to identify the timeframes in which key activities were completed on the matters. This testing was a means of identifying whether delays had occurred and whether the status of matters was accurately reported. Such delays could indicate that matters were not being timely addressed. It should be noted that we elected to perform an analysis of the timeframes as a means of providing an objective measure of the key activities rather than subjectively evaluating individual attorneys' matter management. We also identified controls over the processing of matters and evaluated those relating to matter processing in AD II.

We interviewed each of the individuals in AD II to determine whether they had any knowledge of matters being kept open in LMIS when they should have been closed. Given that the allegation also suggested a link between the number of matters and the number of staff, we obtained information on the core staffing process to determine whether such a link existed. Finally, we performed a comparison of the number of matters and staffing to determine whether a relationship existed and its reasonableness. We specifically carried out the following evaluation steps in conducting this review.

- Reviewed the OIG Hotline allegation to discern the parties and location of the alleged situation.
- Conducted survey and fieldwork at the Legal Division's headquarters, and SWSC offices.
- Documented the Legal Division's organizational structure, relevant policies and procedures, and staff responsibilities.
- Reviewed a prior OIG report, *Review of Allegations Regarding the Legal Management Information System Development Effort*, dated November 26, 1996, for information on the use of LMIS.
- Reviewed the FDIC *Strategic Plan* to identify the Legal Division's performance goals and measures and whether any addressed matter closure rates.
- Interviewed the Managing Attorney, Legal Internal Review Office, located in Jersey City, New Jersey, and obtained the data quality program plan and initial interim report on LMIS data quality.

- Interviewed headquarters Legal Division personnel to obtain an understanding of the processing of legal matters; LMIS operations, training, and usage; and core staffing process.
- Interviewed an individual in the Division of Administration, Management Review Staff, and obtained information to understand and document the core staffing process for FDIC and the Legal Division.
- Planned and tested a statistical sample of real estate and related matters at the SWSC. The OIG's Systems Development Audit Branch extracted LMIS data from the Legal Data Warehouse for use by the Division of Research and Statistics (DRS) in selecting the statistical sample. The universe of matters extracted by the Systems Development Audit Branch included matters logged into LMIS from January 1, 1997 to May 31, 1998, and was defined to parallel the matters and location referred to in the Hotline allegation, namely real estate and related matters in AD II. The statistical sample selected included 105 active, 48 inactive, and 70 closed matters, or 223 total matters, based on the matters' recorded status in LMIS on June 1, 1998. For each matter in the sample, the Systems Development Audit Branch also extracted a Comprehensive Case Report from LMIS. The Comprehensive Case Report contained data relevant to the evaluation such as key dates of activity.
- Relied on the data in LMIS to identify the matter universe and for testing matters, but we recognized that LMIS data was not wholly accurate or complete and the potential impact on our results.
- Conducted fieldwork at the SWSC during the weeks of June 8, 1998, and June 22, 1998. Before visiting the SWSC, we requested the matter files for the 223 matters. Of the 223 matter files, 160 were provided and 63 were not provided (23 active, 10 inactive, and 30 closed matter files). The SWSC provided over 75 percent of the active and inactive matter files we requested, but only 57 percent of the closed matter files. According to SWSC management, closed matter files were stored offsite which made it more difficult to locate them for our site visit. For the files provided, we reviewed them to obtain a basic understanding of the legal matters and to identify the most recent documented activity in the matter files.
- Interviewed all 15 individuals in the AD II Branch to obtain an understanding of the processing of legal matters, including: the use of the Logging and Tracking System; LMIS operations, training, and usage; and core staffing process.
- Obtained information from the SWSC's Logging and Tracking System pertaining to the sampled items, such as the date the "Request for Services" was due, the estimated completion date, and the date completed.
- Besides using DRS to assist us in selecting the statistical sample, we also used its expertise in evaluating the data obtained during our SWSC fieldwork and relied on its analysis of elapsed days required for key activities. We did not verify the underlying statistical formulas and methodologies used by DRS. However, we did review DRS's work product to ensure that it

met our objectives and the results were supported by a detailed discussion of DRS's analysis and methodologies.

- We conducted evaluation fieldwork from March 30, 1998, to September 9, 1998, according to the President's Council on Integrity and Efficiency's *Quality Standards for Inspections*.

RESULTS OF REVIEW

The results of our evaluation indicated no intentional, coordinated effort by AD II to delay the reporting of closed matters in LMIS. We questioned each of the individuals in AD II to determine whether they had any knowledge of matters being shown as open in LMIS when they should have been closed. No one in AD II had any knowledge of such activity, although two individuals provided rationales for keeping matters involving outside counsel or environmental-related matters open after legal work was completed. We discuss these instances later in the report.

Further, while we found no unreasonable delays in assigning matters to attorneys upon receipt from DRR, our analysis of sampled matters provided indications that some should have been closed sooner in LMIS. Additional tests of the sampled matters showed that (1) currently active matters are remaining active longer than matters previously closed, (2) a majority of active and closed matters exceeded their estimated completion dates, and (3) matter files indicated the possibility of extended periods of inactivity and delays in matter closure. We also confirmed the existence of the controls reported by the Legal Division to ensure that the status of matters is monitored and reported accurately in LMIS--except for supervisory concurrence of matter closure by AD II management.

The complainant alleged that matters were being reported as open as a means of preserving jobs. Based on our review of core staffing documentation, we saw no evidence that the number of matters was a factor in determining required Legal Division staffing. Legal Division management also confirmed that the number of matters was not used to determine staffing. Our review of workload drivers, Legal Division staffing, and matter counts showed that they were all decreasing. Open matters were decreasing at a much faster pace than staffing in 1998.

We also identified three management information system issues. First, AD II is duplicating input of data such as matter number, date of "Request for Services," and date matter assigned to attorney, because it uses both LMIS and the Logging and Tracking System to record and track matters. Second, two data fields necessary to track the date an attorney was assigned to the matter and the matter's estimated completion date were usually not completed. Third, matter status codes could be more clearly defined and were not being used consistently.

We discussed our findings with Legal Division management at both headquarters and at the SWSC and made recommendations to:

- improve the controls for closing matters,

- institute procedures or mechanisms to improve matter accountability and client responsiveness that should involve, at a minimum, the timely recording and updating of estimated completion dates in LMIS and timely notification to supervisors of changes in those dates,
- consider the costs and benefits of continuing to use the Logging and Tracking System, including, for example, its usefulness as a management tool, the duplicate effort required to input data, and the potential impact of the Year 2000,
- issue a memorandum clarifying that matters do not have to be open on LMIS to process outside counsel payment and reminding staff to close matters in LMIS when legal work has ceased,
- update outside counsel payment information in the *Legal Management Information System Reference Guide*, revised April 1997,
- evaluate our observations on the clarity of matter status definitions and inconsistent application of matter status codes to determine actions that can be taken to provide management greater assurance that LMIS accurately presents the status of the Legal Division's caseload, and
- examine the statistical analyses we have provided and determine whether the results represent potential case processing or oversight issues warranting further study.

Because the scope of our work was limited to the SWSC, we were unable to determine whether these recommendations would be appropriate for other Legal Division offices. We suggested that the Deputy General Counsels consider the issues and recommendations presented and make such a determination.

On December 3, 1998, the General Counsel provided us the Corporation's written response to a draft of this report. The General Counsel agreed with the recommendations and the response provided the requisite elements of a management decision for each of the seven recommendations. The Corporation's written response is included in its entirety as Appendix I of this report. Appendix II presents our assessment of management's responses to the recommendations and shows that we have a management decision for each of the recommendations.

ASSESSMENT OF THE CONTROL ENVIRONMENT

Monitoring and Reporting of Matters

In its April 27, 1998, response to the allegation, the Legal Division identified specific controls in place which are intended to ensure that the status of matters is monitored and reported accurately in LMIS. Specifically, the Legal Division response stated that it has implemented a data quality program, which entails, in part, producing periodic reports on LMIS matters not updated within the previous 30, 60, or 90 days so that improperly coded matters can be identified. In addition, similar reports will be used to identify matter files to be reviewed to determine the data quality of matters. The Legal Division also uses case reviews as a means of staying informed that cases are still open. The General Counsel and Deputies hold case reviews twice a year at the Service Centers, New York Legal Services Office, and headquarters litigation sections. While these

reviews typically cover the more high profile and sensitive cases, reviews of attorney dockets are conducted by Regional Counsel, Deputy Regional Counsel, and Section Chiefs in the field and by the Assistant General Counsel and Senior Counsel in headquarters through case reviews and review of management reports. In addition, procedures are in place at the Service Centers and New York Legal Services Offices regarding closing the cases on LMIS, which requires concurrence by a supervisor. In addition, the Service Centers in Dallas, Hartford, and Irvine, and the New York Legal Services Office had communicated to staff in writing or in staff meetings the need to close cases.

Overall, we confirmed the existence of the controls reported by the Legal Division to ensure that the status of matters is monitored and reported accurately--with the exception of supervisory concurrence of matter closure. The Legal Division's data quality program included identifying matters that have not been updated within a specified period. Specifically, a February 27, 1998, memorandum from the Legal Information Technology Unit to Legal Division management described the data quality program and the initial tests performed on 23 of 50 LMIS data fields that were designated as high priority. One of the tests identified matters that had not been updated since January 1, 1997. The memorandum instructed management to provide the results to the reviewing attorneys for matter review and data correction.

Management reports were also generated at the SWSC from both LMIS and the Logging and Tracking System to enable management to oversee matters. LMIS reports included overall statistics of SWSC operations, including the number of open matters and open matters by section. Also, a Logging and Tracking System report showing matters and their estimated dates due was generated monthly to enable management to monitor attorney matters. We address the use of the Logging and Tracking System reports to oversee matters later in the report.

Our interviews showed that AD II attorneys generally closed the matters in LMIS themselves, although four attorneys had a legal technician close the matters. In describing the matter closure process, none of the attorneys stated that matter closure required supervisory concurrence. Also, *LMIS Policies and Procedures*, revised as of 3/19/97, explained the process for closing a matter, but did not address or require supervisory approval to do so. The attorneys typically documented matter closure by adding comments to LMIS describing the event or work product that evidenced closure, such as an opinion being rendered or an asset being sold. We also noted that the "Request for Services" form used for entering data into LMIS and the Logging and Tracking System contained a table for supervisory concurrence. However, this table was not completed for any of the matters that we reviewed. The attorneys did acknowledge management's expectation that matters were to be closed when completed.

ANALYSIS OF MATTERS

Matters received by AD II were being assigned timely for attorney disposition. We identified no unreasonable delay in the receipt and assignment of matters to the responsible attorneys. As such, the matters were accurately reflected as active during this part of the process. As previously mentioned, we found no coordinated, intentional effort to delay the reporting of closed matters in LMIS. However, our analysis of matters provided indications that:

- some matters should have been closed sooner in LMIS,
- currently active matters are remaining active longer than matters previously closed,
- a majority of active and closed matters exceeded their estimated completion dates, and
- matter files indicated the possibility of inactivity and delays in matter closure.

Timely Matter Assignment

The time analysis done for us by DRS indicated that active, inactive, and closed matters were usually assigned timely to attorneys upon receipt of a “Request for Services” from DRR. Specifically, 86 percent of active, 75 percent of inactive, and 83 percent of closed matters were assigned to an attorney within 1 day of receipt based upon our analysis of the requests. We obtained similar results by analyzing the comparable LMIS data fields. However, we did find that 17 percent of active matters, 32 percent of inactive matters, and 76 percent of closed matters had been assigned to an attorney before being logged into LMIS.

Matters Should Have Been Closed Sooner in LMIS

The occurrences of matters that should have been closed sooner were notable because they effect LMIS accuracy as to the number of open matters. However, the occurrences were not pervasive. Two of the 15 individuals interviewed in AD II stated that they did not close matters when completed and provided rationales for doing so. Also, our matter file review provided indications, though not proof positive, that some matters should have been closed sooner. The review of active matter files showed that 11 of the 82 files, or 13 percent, contained information that indicated the matter should have been closed. The review of inactive matter files showed 6 of the 48 files, or 13 percent, contained documentation that indicated the matters should have been closed.

The two individuals referred to above explained that, in certain circumstances, matters could not be closed in LMIS although the legal work had been completed. These circumstances included matters in which outside counsel fee bills were pending and those where additional follow-up work was expected.

One individual kept matters open after completing the legal work because the individual believed outside counsel could not receive payment if the matters were closed in LMIS. However, Legal Division officials knowledgeable of LMIS explained that under prior systems matters had been kept open for outside counsel to receive payment, but LMIS did not have the same requirement. Another factor that may have caused confusion regarding the LMIS process for outside counsel

payment was the *Legal Management Information System Reference Guide*, revised April 1997. The Guide incorrectly stated that “A matter should be closed when all activity by the assigned attorney or section/unit ceases and **all outside counsel fees have been paid** [emphasis added].”

The other individual explained that previous experiences in retrieving archived matter documents led the individual to keep matters inactive for 1 to 3 months after completing the legal work. The individual changed matter status from active to inactive, not closed, when follow up work was expected.

For 82 available AD II active matter files,¹ we reviewed the file contents for evidence of legal matter activity such as memorandums, notes, and work products. Our review was done primarily to identify the date of the last documented activity, as an indicator of whether matters were properly classified as active based upon those dates. However, while reviewing the documents, we noted that they contained information showing the matters had been completed or at least the matters’ status as active was questionable. In total, we identified 11 matters that raised questions as to whether they could have been closed in LMIS sooner.

- A matter was assigned to an attorney on February 26, 1998. The file contained a note stating that nothing was left for FDIC to do and the cover of the file contained a note to close it, but the matter was still active in LMIS, as of June 1, 1998.
- A matter to handle title curative work had a clear title commitment in the file dated February 11, 1998, but the matter was still active in LMIS as of June 1, 1998.
- A matter was logged into LMIS on January 24, 1995, and was active as of June 1, 1998. On June 22, 1998, the attorney requested that the matter be closed.
- Outside counsel reviewed documents to determine whether a Buyer Remediation Agreement had been breached by the buyer and reported the analysis results in a document dated March 25, 1998. The firm submitted an invoice dated April 7, 1998, which was approved on April 13, 1998, yet the matter was still active as of June 1, 1998.
- Outside counsel was retained on December 3, 1997, to review a Buyer Remediation Agreement, and on January 13, 1998, submitted its analysis. The firm also submitted an invoice on December 31, 1997, yet the matter was still active as of June 1, 1998.
- An attorney was charged with preparing a sales contract and closing documents on October 29, 1997, and completed the work on March 5, 1998, the same day the asset was sold. However, the matter was not closed as of June 1, 1998.
- An account officer requested on March 8, 1996, an opinion on which to base a write-off case. In an April 13, 1998, reply, the attorney indicated that the matter was low priority so it had not been completed.
- An environmental-related analysis was completed on December 29, 1997, but the matter was not closed until June 10, 1998.
- An attorney was charged with preparing a sales contract and closing documents. LMIS indicated the date completed and result date were January 27, 1998, yet the matter was not closed as of June 1, 1998.
- No work was noted in a matter file and the file contained a note stating “cancelled by A/O [account officer] as asset previously sold” and date completed “2/8/96.”

¹ Of the 105 selected matters, 23 matter files were unavailable. Only 82 files were reviewed.

- Outside counsel was required to perform a review of noncompliance under a Buyer Remediation Agreement. The firm invoiced FDIC on March 2, 1998, but the matter remained active as of June 1, 1998.

Of the 48 AD II inactive matter files requested, we received 38 files. Of the 38 files received, 24 files pertained to a related matter. For 6 matters, the documentation in the files consisted of the “Request for Services,” which stated that the request for services had been cancelled by the account officer as the asset related to the legal matter was previously sold. An individual in AD II told us that the matters dealt with land title difficulties, so if the land was sold, then the title difficulties must have been corrected. Further, the individual stated that the matters were being kept inactive because a party to the matter was being criminally investigated. Also, the individual felt obligated to keep the matters inactive because certain FDIC employees empathized with the plaintiffs. The matters' status as inactive in LMIS, rather than closed, appeared questionable.

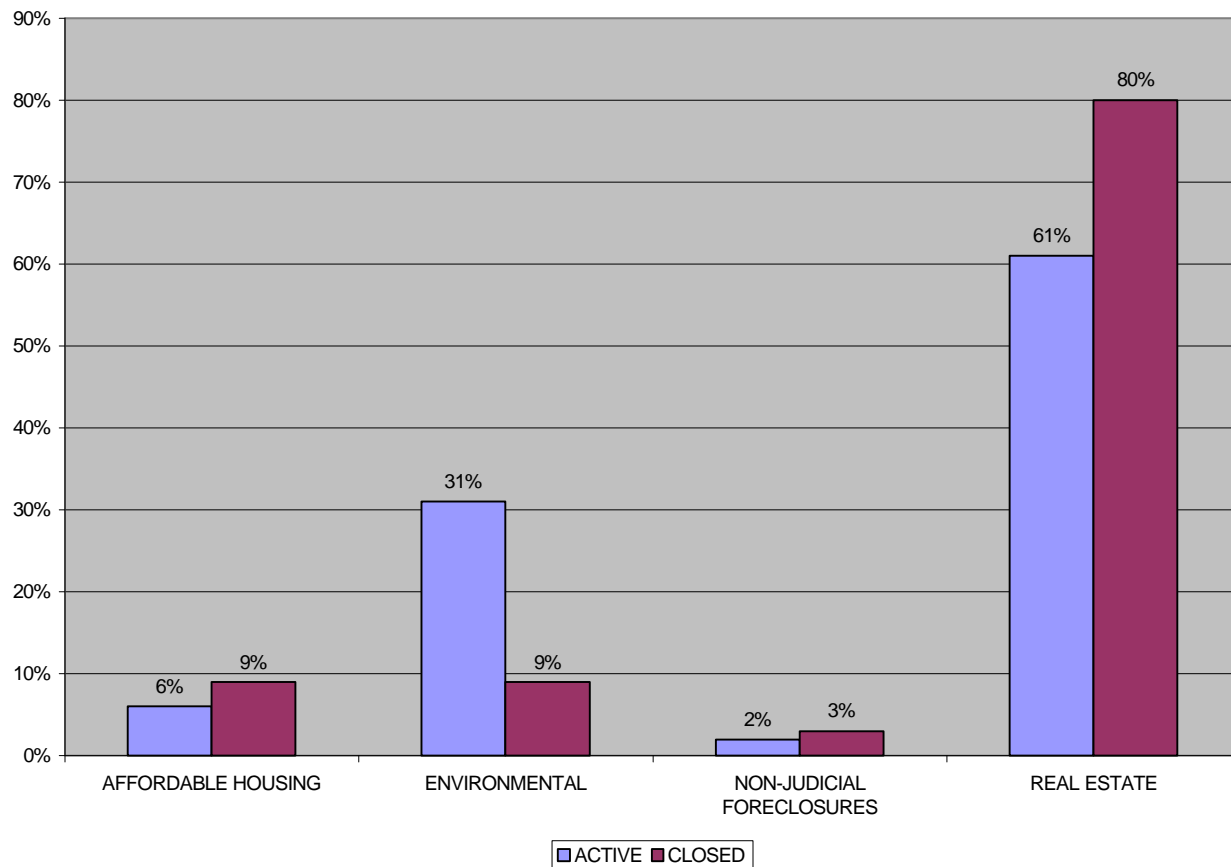
Currently Active Matters Are Remaining Active Longer than Matters Previously Closed

The time analysis of active matters done for us by DRS measured the number of elapsed days between the date the matter was assigned to an attorney per LMIS as compared with our test date of June 1, 1998, to identify how long the matters had been outstanding. As a comparison, DRS's analysis also provided the number of elapsed days between attorney assignment to matter closure for closed matters, which was used for a comparison. The results showed that active matters are remaining active longer than matters previously closed.

Specifically, currently active matters were active for a median of 141 days, as of June 1, 1998, while previously closed matters were active for a median of 91 days, which shows a 55 percent increase in the number of elapsed days.² The increased number of elapsed days raised questions as to its cause and necessity. One possible explanation may be the change in matter subtypes when comparing active matters with closed matters. The most notable change was the increase in percentage of environmental-related matters.

² The median is the number in the middle of a set of numbers; that is, half the numbers have values that are greater than the median, and half have values that are less.

Figure 1: Change in Matter Subtypes Between Active and Closed Matters



Source: DRS Analysis of Matter Subtypes

Majority of Active and Closed Matters Exceeded Their Estimated Completion Date

A comparison of the estimated completion date from the Logging and Tracking System to the test date of June 1, 1998, for active matters, or the date closed for closed matters, showed that 72 percent (89 matters) of the AD II matters tested were not completed by their estimated due date.³ Active matters exceeded their due dates by a median of 91 days and closed matters exceeded their due dates by a median of 20 days. AD management told us that attorneys were expected to complete matters within 10 days to 2 weeks of assignment to ensure client responsiveness. The attorneys were responsible for ensuring the timely completion of matters and for requesting extensions from management to change the estimated completion date. We identified 12 matters that were extended based on our analyses of Logging and Tracking System and “Request for Services” data. However, 9 of these matters exceeded their new estimated completion date.

³ Based on the 123 matters for which we had sufficient information in the Logging and Tracking System to perform the comparison.

Matter Files Indicate the Possibility of Periods of Inactivity and Delays in Matter Closure

We examined the matter files for documents such as memorandums or electronic mail messages to identify the date of last documented activity as a means of showing when work was last performed on the matter. For active matters, the median number of elapsed days from the last documented activity to our test date of June 1, 1998, was 28 days. For 19 percent of the active matters, no documented activity had occurred from 91 to over 180 days from our test date.

For inactive matters, the median number of elapsed days from last documented activity to our test date of June 1, 1998, was 732 days (includes the period of time during which the matters were classified as active). For 87 percent of inactive matters, no activity had occurred for more than 180 days.

The review of closed matter files compared the last documented activity with the date closed in LMIS to determine the number of elapsed days between them. The median number of elapsed days from last documented activity to date closed was 21 days. Over one-half of the matters (56 percent) were closed within 30 days of last documented activity. However, for 32 percent of the closed matters, over 90 days elapsed between the last documented activity and matter closure.

We recognize the limitation of measuring matter activity by relying solely on documented activity in the matter files. For example, attorneys may have made phone calls or did analyses that were not documented. However, the substantial number of active, inactive, and closed matters for which no documented activity had occurred for more than 90 days raised questions as to matter status and the progress being made in completing matters.

We concluded that management oversight could be improved to help ensure that matters are completed and closed in LMIS timely. Our recommendations focused on improving matter oversight by requiring supervisory involvement in matter closure and improved information on estimated completion dates as a means of monitoring matter progress and reducing periods of inactivity. We also recommended that the Legal Division examine the statistical analyses we provided and determine whether the results represent potential case processing or oversight issues warranting further study. If the Legal Division concluded that such issues did exist, we suggested a more comprehensive review of case processing and oversight mechanisms be done to identify necessary corrective actions.

ANALYSIS OF LEGAL DIVISION STAFFING AND WORKLOAD

The complainant alleged that the number of open matters was inflated to justify the number of Legal Division staff. To assess the merit of the allegation, we determined the bases and process for calculating the Legal Division's staffing needs. We also compared the number of matters for the past 2 years to staffing to determine whether they exhibited similar trends. We determined that the Legal Division's workload drivers were decreasing as was its budgeted and actual staffing. With regard to the comparison of actual staffing and number of open matters, we found

that both had decreased during 1997. However, open matters were decreasing at a much faster pace than staffing during 1998.

Core Staffing Analyses

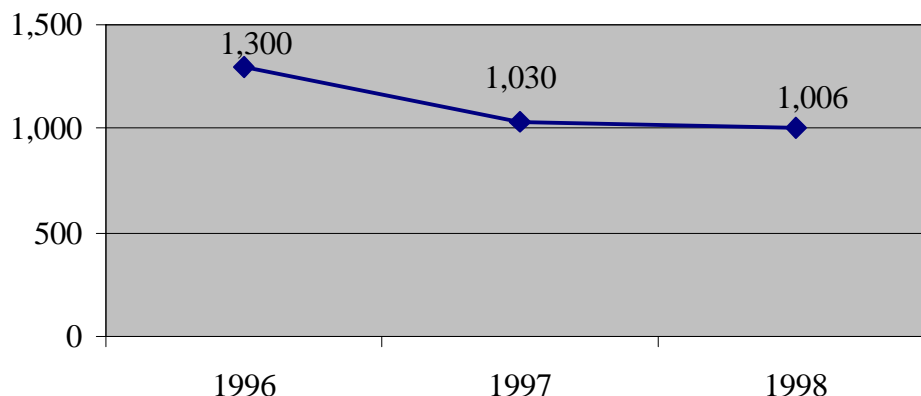
The Legal Division analyzed its workload and estimated its staffing requirements for the period 1997 through 2001, known as Core 3, to comply with the Corporation's request for staffing estimates. The Legal Division based its projected workload and staffing on the Corporate Workload Assumptions approved by the Operating Committee. These assumptions for the AD legal functions included workload drivers used to calculate the number of hours of attorney time needed to perform each of the functions. For the AD legal functions, workload drivers included:

- Number of insolvencies or near insolvencies, including size of institution and type of resolution,
- Assets in liquidation (dollars), including nature and complexity of assets,
- Number of service centers, and
- Number of receiverships and claims arising from these receiverships.

Overall, the workload drivers and the Legal Division's total staffing have been decreasing. For example, DRR projected book value of asset inventory to decrease from \$4.4 billion to \$2.7 billion from December 31, 1997 to December 31, 1998. In addition, it projected a decrease in ending receivership inventory from 1,135 to 878.

The Legal Division reported in the *Legal Division Executive Information System Report for Year End 1997*, issued February 3, 1998, that "Total staffing at year-end 1997 was 1,030 compared to 1,300 at year-end 1996, a 20.8% reduction." Total staffing at year-end 1998 (projected) of 1,006 compared to 1,030 at year-end 1997 shows a planned 2.33 percent reduction. Figure 2 shows the decrease in Legal Division staffing.

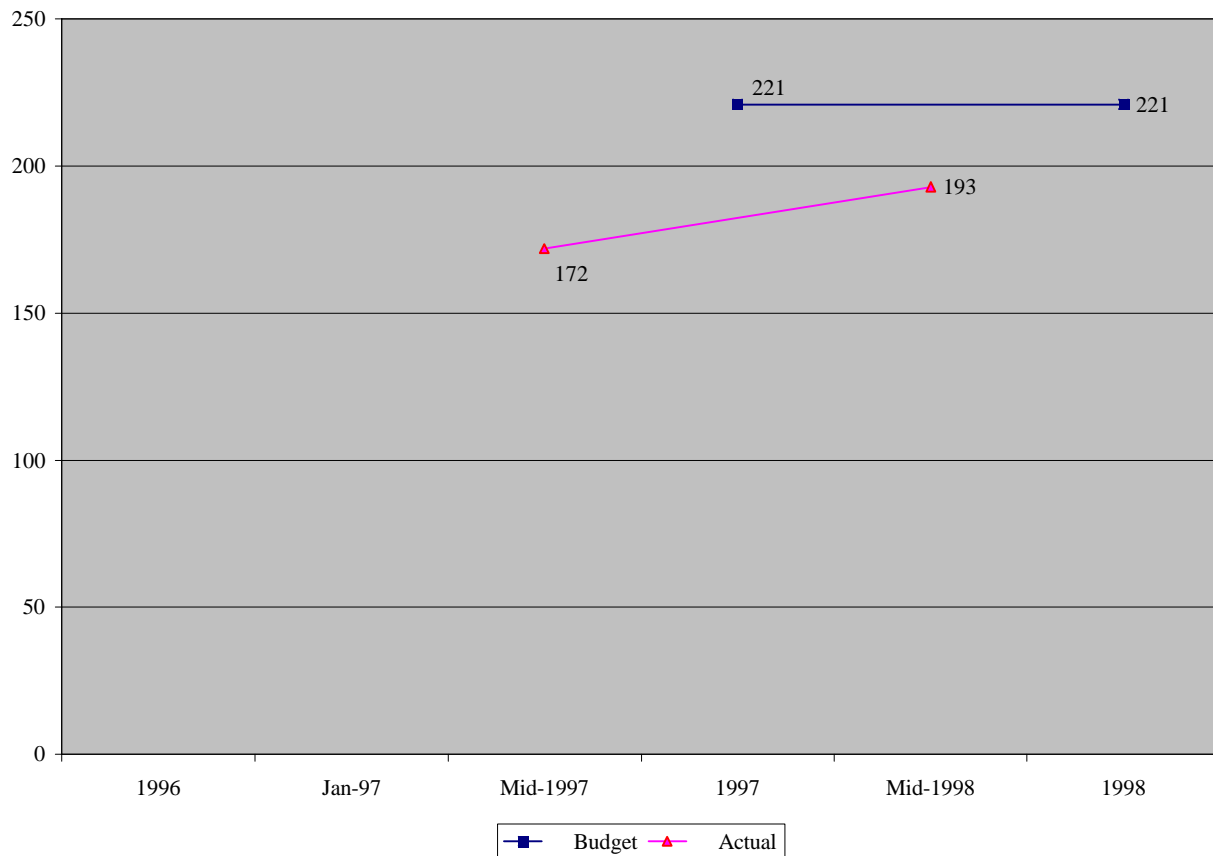
Figure 2: Comparison of Legal Division Year-end Staffing for 1996, 1997, and 1998



Source: *Legal Division Executive Information System Report for Year End 1997* and Legal Division's Core 3 Staffing Submission

Actual SWSC staffing increased from 172 in mid-1997 to 193 in mid-1998, a 12.2 percent increase. Of the total actual staffing, DRR legal personnel represented the majority at about 78 percent. SWSC legal staffing was projected at 221 for year-end 1997 and 1998 (Figure 3). The increase in projected staffing for 1997 and 1998 was primarily attributable to an increase of 33 individuals in the Corporate Operations Branch to handle goodwill matters and an increase of 21 individuals in the Litigation Branch to handle the workload associated with multiple office closings and clean up.⁴ For the purposes of core staffing, the Litigation Branch includes DRR legal. During 1997, the SWSC became responsible for additional matters that had been previously handled by the Midwest Service Center, Southeast Service Center, and Franklin Office that closed during the year. According to a May 1998 status report, these three offices had a total of 2,089 open matters at the time they closed.

Figure 3: Legal Division SWSC Projected Versus Actual Staffing



Source: Legal Division Core 3 Staffing Submission

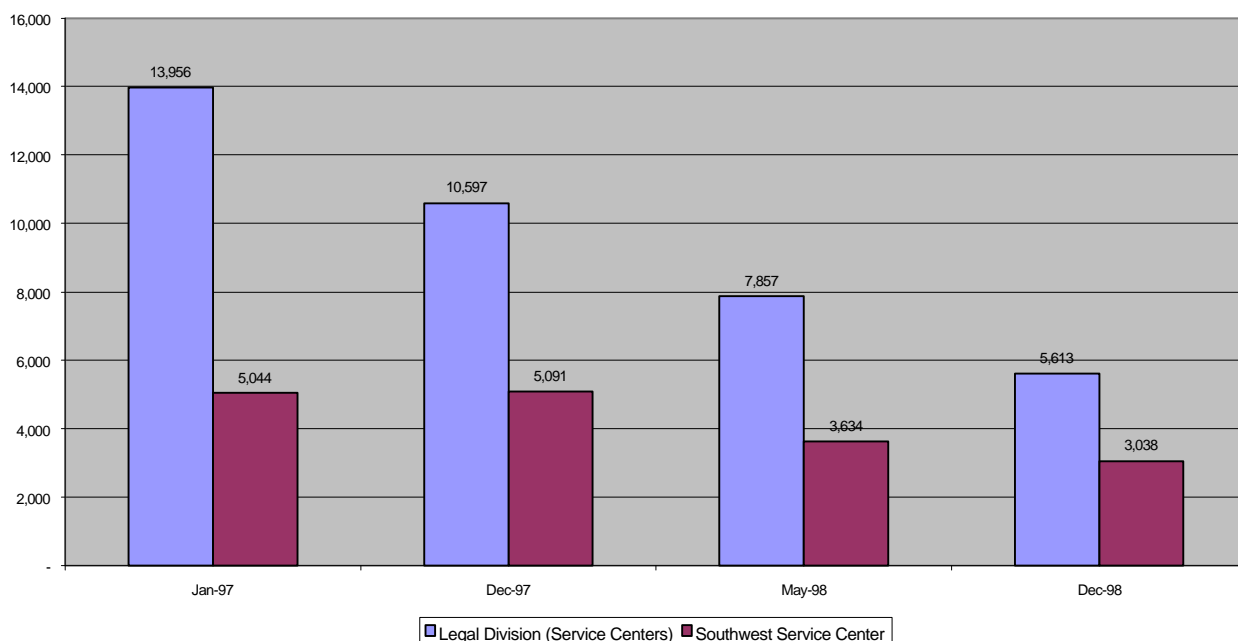
⁴ Goodwill matters arose out of the *Financial Institutions Reform, Recovery and Enforcement Act's* abolition of the use of goodwill, an intangible asset, to meet regulatory capital standards.

Comparative Analysis of Core Staffing and Matter Trends

Legal Division officials responsible for approving the core staff numbers stated that the number of matters was not a factor used in determining core staffing requirements. Although the Legal Division stated the number of legal matters was not used in estimating core staffing requirements, we analyzed the relationship of staffing and the number of matters to determine whether both exhibited similar trends. Over time, decreasing driver division workload such as fewer assets in liquidation could result in decreasing workload for a servicing division. For the Legal Division, this may mean fewer incoming matters or fewer matters being assigned to each attorney.

Overall, we found that the Legal Division Service Centers' open matters had been decreasing from 1997 through 1998 (Figure 4). Legal Division staffing decreased by nearly 21 percent as previously mentioned, closely mirroring the 24 percent decrease in open matters during 1997. However, during 1998, the decrease in open matters has been much greater than the decrease in staffing. During the first half of 1998, Legal Division Service Centers' open matters have decreased by 26 percent and SWSC open matters decreased by 29 percent. Open matters were projected to decrease during the second half of the year by 29 percent and 16 percent for the Legal Division Service Centers' and the SWSC, respectively. A 2.33 percent decrease in staffing was projected for the Legal Division overall during 1998. Nevertheless, as previously mentioned, Legal Division officials told us that no relationship exists between the number of open matters and staffing. Thus, there does not appear to be any incentive to keep matters open unnecessarily—with the possible exception of an individual trying to make himself or herself look more essential because of a larger caseload.

Figure 4: Legal Division Service Centers' Open Matters



Source: FDIC Legal Division Service Center Statistics, May 1998

MANAGEMENT INFORMATION SYSTEMS ISSUES

Three management information system issues emerged during the evaluation which we believed merited management's attention. First, the SWSC uses both LMIS and Paradox to record matters resulting in duplicate matter records. Second, two data fields necessary to track the date an attorney was assigned to the matter and the matter's estimated completion date were usually not completed. Third, matter status codes could be more clearly defined and were not being used consistently.

As stated earlier in the report, SWSC management currently uses the Logging and Tracking System to monitor attorney matter load and matter due dates by producing monthly reports. The Logging and Tracking System is not the Legal Division's official system of record, but rather a system implemented by the SWSC to augment the former CMS--which was not meeting user needs. The Logging and Tracking System contains data fields for matter control number, attorney name, requestor name, bank number, subject matter, work required, due date, extension date, date completed, and comments. LMIS replaced CMS in 1997 and contains the same data fields as the Logging and Tracking System. AD II did use the Logging and Tracking System to record additional information not included in LMIS including matters less than 1 hour (LMIS captures matters exceeding 1 hour) and correspondence. The duplicate systems result in duplicate work. In AD II, the legal technicians input the matter data in the Logging and Tracking System and also create the initial matter record in LMIS. The LMIS matter records and the Logging and Tracking System matter records are cross-referenced by the legal technicians so that they can find the records associated with a specific matter in either system.

As part of the review, we examined data from the LMIS Comprehensive Case Reports for the AD II matters selected for testing. The review showed two data fields that could be used in monitoring matters—the estimated completion date and assigned attorney date—were often not completed. Specifically, the sample of 105 active and 70 closed AD II matters showed that 34 percent of the active matters and 39 percent of the closed matters contained an estimated completion date. The sample of active and closed AD II matters showed that 57 percent of active matters and 66 percent of closed matters contained the assigned attorney date. Completion of these data fields, in particular, is important because the information they provide could be used to enhance accountability over matter completion. One individual in AD II stated that the Outside Counsel Management and Internal Operations Section, SWSC, generated error reports listing estimated completion dates that had been exceeded. The usefulness of this report would be reduced because of the incomplete data.

The data fields may not have been completed for two reasons. According to the *Legal Management Information System Reference Guide*, revised April 1997, the assigned attorney date and estimated completion date were not required fields, meaning the data fields were not required by the system to be completed when creating the matter record. Also, the Logging and Tracking System captured the same data for use in monitoring matter completion, which may have reduced the perceived necessity for also recording the information in LMIS.

It should be noted that such usage of LMIS would not constitute a “productivity system” or a timekeeping system, but would provide managers the ability to monitor matter progress. Further,

headquarters management would have access to more information on field matters because LMIS is a nationwide system in contrast with the SWSC's Logging and Tracking System.

We also found that matter status codes could more clearly show when matter status should be changed from active to inactive, inactive to closed, and active to closed, as a means of helping ensure LMIS matter status accuracy. *LMIS Policies and Procedures*, revised as of 3/19/97, provides definitions for active, inactive, and closed matters:

- Active matters require the assigned attorney/paralegal to render some legal services and may require a one-time activity or involve ongoing activities,
- Inactive matters should rarely be on LMIS. Matters are usually active or closed. However, the inactive indicator is appropriate in certain circumstances. For example, if the client has advised the Legal Division to hold off further activity on a matter, the inactive indicator is appropriate, and
- A matter should be closed on LMIS when all substantive activity/legal services required by the attorney/paralegal are completed.

Our review showed that in at least two instances the attorney was waiting months for information such as a file or additional information from the account officer. Given that active legal work was not being performed on the matters for some time, we had concerns as to whether the matters' active LMIS status appropriately reflected the status of the matter or whether inactive status would be the more appropriate status. The matter definition did not include a time limit to be used in guiding the attorneys for placing matters in inactive status.

Inactive matters we reviewed had been in inactive status for a median of 132 elapsed days. We were concerned that the number of days was indicative of matters being changed to inactive status and then not being timely revisited because no limit was established in the definition on the number of days a matter could be classified as inactive.

The closed matter definition did not clearly specify when a matter should be closed. We recognize the many different matters handled by the Legal Division necessitated a broad definition, but a clearer definition may help ensure that matters are closed more timely and are consistently closed. For example, AD II handles real estate matters and was requested to prepare closing documents for asset sales. The LMIS comment field for these matters showed that they were typically closed when FDIC received the sales proceeds, instead of when the legal work was completed. We also found an example of a matter when the closing documents were prepared, the asset sold, sales proceeds collected, but the matter remained active.

In addition, we noted that matter status was not always consistently applied. For example, one individual could not readily discern active in-house matters versus outside counsel matters because of the large number of matters for which the individual was responsible. The individual's solution was to change the outside counsel matters which totaled about 1,084 matters from active status to inactive status to distinguish between them. Our concern is that the various users of the management reports may not be aware of the individual's solution and may misinterpret the number of active and inactive matters.

Also, the additional information we received on the allegation dealt with this individual's workload. As previously mentioned, the complainant alleged the individual's matters were being recorded as inactive when the matters could be closed with a limited amount of work. An individual working on the matters explained to us the nature of the matters. The matters are called "Ad Valorem" tax matters, which deal with a taxing authority suing FDIC for non-payment of real estate taxes. Oftentimes, FDIC has no interest in the real estate so outside counsel files a disclaimer in response to the tax suit. The individual responsible for the matters functions primarily as oversight for outside counsel who handle the matters on a flat-fee basis. Legal Division management was aware of the matters and monitors their completion. We obtained a report showing the number of open matters from December 1996 through May 1998 and which detailed the Ad Valorem tax matters. The report showed that AD II Ad Valorem tax matters had decreased from 2,262 in December 1996 to 1,142 in May 1998.

CONCLUSIONS AND RECOMMENDATIONS

We did not identify any intentional, coordinated effort to delay the reporting of closed matters in LMIS. However, we did identify a number of indications that matters were not closed as timely as they should have been. We confirmed the existence of the controls reported by the Legal Division to ensure that matter status is monitored and reported accurately--with the exception of supervisory concurrence of matter closure. We believe these controls could be enhanced to provide greater accountability for handling and reporting of matters.

We determined that the SWSC AD II management was not approving case closures. It was not doing so despite the fact that the Legal Division reported that the service centers' procedures required such approvals and the SWSC's "Request for Services" form included a table for supervisory concurrence. SWSC management explained that management reports are used for monitoring matters and ensuring that the matters are closed in LMIS after legal work is completed. To supplement the management reports and to ensure that matters are closed timely after all necessary work is done, we recommended that the Deputy General Counsels:

- (1) Modify the *Legal Management Information System Reference Guide*, revised April 1997, to require supervisory approval of case closures. At the SWSC, this approval could be documented by requiring supervisors to initial the "Request for Services" form indicating that they concur with the case being closed.

The SWSC's use of a standard timeframe is a good means of ensuring client responsiveness and accountability. SWSC management has pointed out that the standard time frame is an estimate and subject to change usually because of factors outside its control. We recognize that changes do occur during the pursuit of legal matters, but urged the SWSC to ensure that new estimates for matter completion be submitted by the attorneys before the original estimated completion dates are exceeded, and are approved by management, documented, and recorded in LMIS. Accordingly, we recommended that the Deputy General Counsels:

- (2) Institute procedures or mechanisms to improve matter accountability and client responsiveness that should involve, at a minimum, the timely recording and updating of

estimated completion dates in LMIS and timely notification to supervisors of changes in those dates, and

- (3) Examine the statistical analyses we have provided and determine whether they believe that the results represent potential case processing or oversight issues warranting further study. If the Legal Division concludes such issues do exist, we suggest a more comprehensive review of case processing and oversight mechanisms be done to identify necessary corrective actions.

While the Logging and Tracking System has served the SWSC in the past by helping it manage its matters, the matter information should be recorded in LMIS because it is the Legal Division's official system of record. Also, SWSC legal technicians will no longer have to enter duplicate data and will be able to use their time for other tasks. Further, during our discussion with headquarters management, it was pointed out that the Logging and Tracking System is more than likely not Year 2000 compliant and may stop functioning at that point. Accordingly, we recommended that the Regional Counsel, SWSC:

- (4) Consider the costs and benefits of continuing to use the Logging and Tracking System, including, for example, its usefulness as a management tool, the duplicate effort required to input data, and the potential impact of the Year 2000.

We also discussed with SWSC and headquarters management matters that should have been closed in LMIS, including those involving outside counsel and environmental-related matters, misinformation in the *Legal Management Information System Reference Guide*, revised April 1997, on outside counsel payment, needed improvements to matter status definitions, and inconsistency in matter status code application. We recommended that the Deputy General Counsels:

- (5) Issue a memorandum clarifying that matters do not have to be open on LMIS to process outside counsel payment and reminding staff to close matters in LMIS when legal work has ceased,
- (6) Update outside counsel payment information in the *Legal Management Information System Reference Guide*, revised April 1997, and
- (7) Evaluate our observations on the clarity of matter status definitions and inconsistent application of matter status codes to determine actions that can be taken to provide management greater assurance that LMIS accurately presents the status of the Legal Division's caseload.

Because the scope of our work was limited to the SWSC, we were unable to determine whether these recommendations would be appropriate for other Legal Division offices. We suggested that the Deputy General Counsels consider the issues and recommendations presented and make such a determination.

CORPORATION RESPONSE AND OIG EVALUATION

On December 3, 1998, the General Counsel provided the Corporation's written response to a draft of this report. This response is presented as Appendix I to this report. The General Counsel agreed with our recommendations, and the response provided the requisites for a management decision for all seven recommendations. The Legal Division plans to have all necessary corrective actions completed by March 31, 1999.

Modify the *Legal Management Information System Reference Guide*, revised April 1997, to require supervisory approval of case closures. At the SWSC, this approval could be documented by requiring supervisors to initial the "Request for Services" form indicating that they concur with the case being closed. The General Counsel agreed with our recommendation. The Legal Division will modify the form to clarify that supervisory concurrence is required to close the case. In addition, the next Legal Division Information Systems Users Group (LUG) meeting on LMIS and Legal Payment System (LPS) issues will include an agenda item to determine the appropriate modifications to the *Legal Management Information System Reference Guide* to require supervisory approval of case closures.

Institute procedures or mechanisms to improve matter accountability and client responsiveness that should involve, at a minimum, the timely recording and updating of estimated completion dates in LMIS and timely notification to supervisors of changes in those dates. The Legal Division agreed with our recommendation and will require all attorneys to complete in LMIS their estimated case completion date fields and update them when the estimated completion date changes. In addition, the Legal Division will require that attorneys obtain a written authorization from their immediate supervisor to change an estimated completion date from the date originally entered, and will require that the authorization be obtained before the original date is exceeded. Once approved by the supervisor, the change will be documented by entering it in LMIS along with comments as to the reason for the extension. The next LUG meeting will include an agenda item to determine the appropriate modifications to the *Legal Management Information System Reference Guide* consistent with these changes.

Examine the statistical analyses we have provided and determine whether they believe that the results represent potential case processing or oversight issues warranting further study. If the Legal Division concludes such issues do exist, we suggest a more comprehensive review of case processing and oversight mechanisms be done to identify necessary corrective actions. SWSC Legal Division management examined the statistical analyses provided by the OIG and believes that the corrective actions to be undertaken in connection with the other report recommendations will adequately address any potential case processing and oversight issues raised. Accordingly, the Legal Division will not undertake a more comprehensive review at this time.

Consider the costs and benefits of continuing to use the Logging and Tracking System, including, for example, its usefulness as a management tool, the duplicate effort required to input data, and the potential impact of the Year 2000. The Legal Division agreed that LMIS should be the only system used as the official system of record. The Paradox-based Legal

Services Request System (Logging and Tracking System) will be phased out as support for non-Microsoft applications is discontinued by Division of Information Resources Management.

Issue a memorandum clarifying that matters do not have to be open in LMIS to process outside counsel payment and reminding staff to close matters in LMIS when legal work has ceased. The Legal Division agreed with the recommendation and will re-issue a memorandum clarifying payment and closure procedures and advising staff that matters should be closed on LMIS once work has ceased. In addition, the SWSC has already issued a memorandum to attorneys that cases should be closed on LMIS as soon as work ceases on a case.

Update outside counsel payment information in the *Legal Management Information System Reference Guide*, revised April 1997. The Legal Division agreed with the recommendation. The Legal Information Technology Unit will update outside counsel payment information in the reference guide in order to correct the statement that “A matter should be closed when all activity by the assigned attorney or section/unit ceases and **all outside counsel fees have been paid** [emphasis added].”

Evaluate our observations on the clarity of matter status definitions and inconsistent application of matter status codes to determine actions that can be taken to provide management greater assurance that LMIS accurately presents the status of the Legal Division’s caseload. The Legal Division agreed with the recommendation. The Legal Division will include an agenda item for next LUG meeting on LMIS and LPS issues regarding “when a case should be closed.” The LUG will clarify matter status codes, particularly the use of the “inactive” and “closed” status codes, and will develop recommendations for inclusion in the *Legal Management Information System Reference Guide*.